

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

SCOTT SHUMATE,

Plaintiff,

v.

Case No: 2:21-cv-128-JLB-MRM

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

ORDER

The Magistrate Judge has entered a Report and Recommendation, recommending that the Commissioner of Social Security's Unopposed Motion for Entry of Judgment with Remand ([Doc. 32](#)) be granted. ([Doc. 33.](#)) No party has objected and the time to do so has expired.

A district judge may accept, reject, or modify a magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1). In the absence of objections, a district judge is not required to review the factual findings in the report de novo, but legal conclusions are reviewed de novo even without an objection. [Id.](#); [Cooper-Houston v. S. Ry. Co.](#), 37 F.3d 603, 604 (11th Cir. 1994); [Garvey v. Vaughn](#), 993 F.2d 776, 779 n.9 (11th Cir. 1993).

After an independent review of the record, and noting the lack of any objection, the Court agrees with the well reasoned Report and Recommendation.


Accordingly, it is **ORDERED**:

1. The Report and Recommendation ([Doc. 33](#)) is **ADOPTED** and made a part of this Order for all purposes.
2. The Commissioner's Unopposed Motion for Entry of Judgment with Remand ([Doc. 32](#)) is **GRANTED**.
3. The decision of the Commissioner is **REVERSED** and this case is **REMANDED** under sentence four of [42 U.S.C. § 405\(g\)](#) for further administrative action and proceedings as follows:

Upon receipt of the court order, the Appeals Council will instruct the administrative law judge (ALJ) to obtain vocational expert (VE) testimony to determine if an individual with Plaintiff's vocational profile and residual functional capacity can perform other jobs in significant numbers in the national economy; before relying on VE testimony, the ALJ shall resolve any apparent conflicts posed by the Dictionary of Occupational Titles and the VE testimony; and the ALJ shall also offer Plaintiff an opportunity for a new hearing and shall issue a new decision.

4. Plaintiff is instructed that any application for fees, costs, or expenses must comply with the Court's Standing Order on Management of Social Security Cases, In re Administrative Orders of the Chief Judge, No. 3:21-mc-1-TJC, Doc. 43 (Dec. 7, 2021).
5. The Clerk is **DIRECTED** to enter judgment accordingly, terminate any pending motions and deadlines, and close the file.

ORDERED at Fort Myers, Florida, on March 31, 2022.



JOHN L. BADALAMENTI
UNITED STATES DISTRICT JUDGE